

REMARKS

Forty-five claims were originally filed in the present Application. Claims 1-7, 9-12, 14-27, 29-32, and 34-45 currently stand rejected. Claims 8, 13, 28, and 33 are objected to, but would be allowable if rewritten in independent form including all limitations of the base claim and any intervening claims. Claims 8, 13, 28, 33, and 45 are amended herein. Reconsideration of the Application in view of the foregoing amendments and the following remarks is respectfully requested.

35 U.S.C. § 102(e)

In paragraph 1 of the Office Action, the Examiner rejects claim 45 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,659,861 to Faris et al. (hereafter Faris). The Applicants respectfully traverse these rejections for at least the following reasons.

“For a prior art reference to anticipate in terms of 35 U.S.C. §102, every element of the claimed invention must be *identically* shown in a single reference.” *Diversitech Corp. v. Century Steps, Inc.*, 7 USPQ2d 1315, 1317 (CAFC 1988). The Applicants submit that Faris fails to identically teach every element of the claims, and therefore does not anticipate the present invention.

Regarding the Examiner’s rejection of independent claim 45, Applicants respond to the Examiner’s §102 rejection as if applied to amended claims 45 which is now amended to recite “*said user device initially providing an access code to said event server for accessing said event content, said user device bi-*

directionally communicating with said event server directly through one or more wireless base station transceivers and one or more local area networks,” which are limitations that are not taught or suggested either by the cited references, or by the Examiner’s citations thereto. Applicants submit that the foregoing amendments are supported by claim 4 and 24, as originally filed, and therefore do not necessitate a new search.

Faris essentially teaches “[a]n Internet-based system for enabling a time-constrained competition among a plurality of participants over the Internet” (see Abstract). In contrast, Applicants claimed system is not restricted to communications over the Internet. In particular, Applicants disclose and claim network gaming devices that communicate with an event server “directly through one or more wireless base station transceivers and one or more local area networks.” Applicants submit that the embodiment recited in amended claim 45 is not restricted to communication via the Internet.

Because a rejection under 35 U.S.C. §102 requires that every claimed limitation be *identically* taught by a cited reference, and because the Examiner fails to cite Faris to identically teach or suggest the claimed invention, Applicants respectfully request reconsideration and allowance of amended independent claim 45 so that claim 45 may issue in a timely manner.

35 U.S.C. § 103

In paragraph 2 of the Office Action, the Examiner rejects claims 1-3, 5, 9-12, 14-23, 25, 29-32, and 34-44 under 35 U.S.C. § 103(a) as being unpatentable

over Faris. The Applicants respectfully traverse these rejections for at least the following reasons. Applicants maintain that the Examiner has failed to make a *prima facie* case of obviousness under 35 U.S.C. § 103(a) which requires that three basic criteria must be met, as set forth in M.P.E.P. §2142:

"First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations."

The initial burden is therefore on the Examiner to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a). Applicants respectfully traverse the Examiner's rejections, and submit that Faris fail to teach a number of the claimed elements of the present invention. The Applicants therefore respectfully submit that the obviousness rejections under 35 U.S.C §103 are improper.

With regard to claims 1, 21, and 43, the Examiner states that Faris "does not "explicitly address the expiration of the access code." Applicants concur. However, the Examiner fails to cite any additional reference(s) to support the rejections. Instead, the Examiner only states that "it would have been obvious . . . to expire an access code" It appears that the Examiner is utilizing Official Notice without expressly stating so. Applicants therefore respectfully request the Examiner to cite specific references in support of these rejections, and failing to do so, to reconsider and withdraw the rejections of

claims 1, 21, and 43, so that the present Application may issue in a timely manner.

With regard to claim 44, “means-plus-function” language is utilized to recite elements and functionality similar to those recited in claims 1 and 21 which are discussed above. Applicants therefore incorporate those remarks by reference with regard to claim 44. In addition, the Courts have frequently held that “means-plus-function” language, such as that of claim 44, should be construed in light of the Specification.

More specifically, means-plus-function claim elements should be *construed to cover the corresponding structure, material or acts described in the specification*, and equivalents thereof. Applicants respectfully submit that, in light of the substantial differences between the teachings of Faris and Applicants’ invention as disclosed in the Specification, claim 44 is therefore not anticipated or made obvious by the teachings of Faris.

Regarding the Examiner’s rejection of dependent claims 2-3, 5, 9-12, 14-20, 22-23, 25, 29-32, and 34-42, for at least the reasons that these claims are directly or indirectly dependent from respective independent claims whose limitations are not identically taught or suggested, the limitations of these dependent claims, when viewed through or in combination with the limitations of the respective independent claims, are also not identically taught or suggested. Applicants therefore respectfully request reconsideration and allowance of dependent claims 2-3, 5, 9-12, 14-20, 22-23, 25, 29-32, and 34-42, so that these claims may issue in a timely manner.

For at least the foregoing reasons, the Applicants submit that claims 1-3, 5, 9-12, 14-23, 25, 29-32, and 34-44 are not unpatentable under 35 U.S.C. § 103 over Faris, and that the rejections under 35 U.S.C. § 103 are thus improper. The Applicants therefore respectfully request reconsideration and withdrawal of the rejections of claims 1-3, 5, 9-12, 14-23, 25, 29-32, and 34-44 under 35 U.S.C. § 103.

In paragraph 3 of the Office Action, the Examiner rejects claims 4 and 24 under 35 U.S.C. § 103(a) as being unpatentable over Faris in view of U.S. Patent No. 6,659,861 to Subrahmanyam et al. (hereafter Subrahmanyam). The Applicant respectfully traverses these rejections for at least the following reasons.

Regarding the Examiner's rejection of dependent claims 4 and 24, for at least the reasons that these claims are directly or indirectly dependent from respective independent claims whose limitations are not identically taught or suggested, the limitations of these dependent claims, when viewed through or in combination with the limitations of the respective independent claims, are also not identically taught or suggested. Applicants therefore respectfully request reconsideration and allowance of dependent claims 4 and 24, so that these claims may issue in a timely manner.

In addition, the Court of Appeals for the Federal Circuit has held that "obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion, or incentive supporting the combination." In re Geiger, 815 F.2d 686, 688, 2 U.S.P.Q.2d

1276, 1278 (Fed. Cir. 1987). Applicants submit that the cited references do not suggest a combination that would result in Applicants' invention, and therefore the obviousness rejection under 35 U.S.C §103 is improper.

For at least the foregoing reasons, the Applicants submit that claims 4 and 24 are not unpatentable under 35 U.S.C. § 103 over Faris in view of Subrahmanyam, and that the rejections under 35 U.S.C. § 103 are thus improper. The Applicants therefore respectfully request reconsideration and withdrawal of the rejections of claims 4 and 24 under 35 U.S.C. § 103.

Allowable Subject Matter

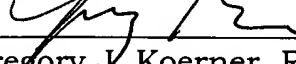
In paragraph 4, the Examiner indicates that claims 8, 13, 28, and 33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants therefore amend claims 8, 13, 28, and 33 in independent form including all of the limitations of the base claim and any intervening claims, to thereby place claims 8, 13, 28, and 33 in condition for immediate allowance.

Summary

Applicants submit that the foregoing amendments and remarks overcome the Examiner's rejections under 35 U.S.C. §102(e) and 35 U.S.C. §103(a). Because the cited references, or the Examiner's citations thereto, do not teach or suggest the claimed invention, and in light of the differences between the claimed invention and the cited prior art, Applicants therefore submit that the claimed invention is patentable over the cited art, and respectfully request the Examiner to allow claims 1-45, so that the present Application may issue in a timely manner. If there are any questions concerning this amendment, the Examiner is invited to contact the Applicants' undersigned representative at the number provided below.

Respectfully submitted,

Date: 5/27/04

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